



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MAR - 6 2014

William J. McGinley, Esq.
2550 M Street, NW
Washington, D.C. 20037

RE: MUR 6556
The Honorable Paul Broun
Paul Broun Committee and Paul Kilgore
in his official capacity as treasurer

Dear Mr. McGinley: .

On April 19, 2012, the Federal Election Commission notified your clients, Paul Broun and the Paul Broun Committee and Paul Kilgore in his official capacity as treasurer (the "Broun Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

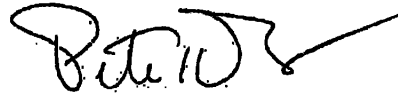
Upon further review of the allegations contained in the complaint and information supplied by your clients, the Commission, on February 25, 2014, voted to dismiss the allegations that the Broun Committee violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4) by failing to accurately report loans and disbursements. Based on information before the Commission, however, it appears that the Broun Committee may have failed to properly disclose three loans obtained through Broun's home equity line of credit in violation of 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4). The Commission cautions the Broun Committee to take steps to ensure that its conduct is in compliance with the Act and the Commission's regulations. Finally, the Commission found no reason to believe that Paul Broun violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(d)(4). The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

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If you have any questions, please contact Dominique Dillenseger, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter G. Blumberg", with a long horizontal stroke extending to the right.

Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Paul Broun **MUR: 6556**
Paul Broun Committee and Paul Kilgore in his official
capacity as treasurer¹

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission by Citizens for Responsibility and Ethics in Washington ("CREW"), alleging violations of the Federal Election Campaign Act of 1971, as amended ("the Act"), by Representative Paul Broun and his authorized committee, the Paul Broun Committee and Paul Kilgore in his official capacity as treasurer (the "Committee"). *See* 2 U.S.C. § 437g(a)(1).

CREW filed a complaint alleging that Representative Paul Broun and the Committee violated the Act by misreporting the source of \$304,000 in loans Broun made to his campaign in 2007 and 2008 as personal funds rather than bank loans. Compl. ¶¶ 13-14 (Apr. 12, 2012). Respondents do not dispute that the Committee misreported the source of three loans in 2007 but argue that the failure was "inadvertent," could be "cured through submission of amended reports," and request dismissal. Resp. at 1-2 (June 12, 2012). Shortly thereafter, on June 26, 2012, the Committee filed amended disclosure reports identifying the source of some of these funds as home equity loans and related disbursements.

The Committee misreported two loans totaling \$114,000 by reporting the source of the funds as personal funds rather than as bank loans. In addition, the Committee failed to report the

¹ Tim Echols served as the treasurer of the Paul Broun Committee from 2007 to 2008, when the original loans at issue were made to the Committee. On January 8, 2009, the Committee filed an amended Statement of Organization identifying Paul Kilgore as the treasurer of the Paul Broun Committee. On February 13, 2013, Broun filed a Statement of Candidacy for the 2014 Senate race in Georgia, designating the Paul Broun Committee as his principal campaign committee. On April 26, 2013, the Committee filed a new Statement of Organization listing Paul Kilgore as treasurer.

1 receipt of a third bank loan in the amount of \$65,000. *See* Resp. at 2, n.1. Because the original
2 activity that gave rise to the reporting violations is now outside the five-year statute of
3 limitations period, the Committee has substantially corrected the record, and there are no other
4 violations at issue in this matter, the Commission dismisses the allegations that the Committee
5 violated the Act by failing to accurately report the loans and related disbursements in the relevant
6 disclosure reports. The Commission also cautions the Committee about the Act's loan reporting
7 requirements. Further, because Paul Broun has no personal liability for the reporting violations,
8 the Commission finds no reason to believe that Paul Broun violated the Act.

9 II. FACTS

10 In 2012, CREW released a report, entitled *Family Affair* ("CREW Report"), which
11 claimed that the Committee paid Broun interest on personal loans he made to the Committee,
12 despite reporting that he "would not charge interest." Compl., Ex. C. In its report, CREW
13 identified \$28,756 in disbursements for interest payments to Representative Broun.² Compl.
14 ¶11; *id.*, Ex. C. According to the Complaint, in response to the CREW Report, Broun told a
15 newspaper on March 22, 2012, that "the interest his campaign paid on the loans went to the bank
16 he borrowed the money from." Compl. ¶ 12; *id.*, Ex. D.

² The CREW Report, which is attached to the Complaint, cites to five of the Committee's disclosure reports in support of its \$28,756 calculation. *See* Compl., Ex. C at n.6. Two of the cited reports however, do not include any itemized interest payments to Broun. *See* 2009 Year-End Report (filed Jan. 29, 2010) (disclosing no interest payments to Broun); 2010 April Quarterly Report at 273, 277 (filed Apr. 14, 2010) (disclosing \$5,809.14 in interest payments); 2010 Pre-Primary Report at 241-242 (filed Jul. 8, 2010) (disclosing \$18,647.91 in interest payments); 2010 October Quarterly Report (filed Oct. 13, 2010) (disclosing no interest payments to Broun); 2010 Year-End Report at 18 (filed Jan. 31, 2011) (disclosing \$4,298.75 in interest payments). The total amount of interest paid to Broun disclosed in these reports is \$28,755.80. However, the Committee also disclosed interest payments on its 2011 July Quarterly Report, for a total amount of \$30,201.46 in loan interest payments to Broun. *See* 2011 July Quarterly Report at 98 (filed Jul. 15, 2011) (disclosing \$1,445.66 in interest payments). In addition, the Committee reported \$2,692.21 as a debt to Broun for "finance charges" on its Schedule Ds filed for the 2008 Year-End Report and 2009 disclosure reports. *See* 2008 Year-End Report at 50 (filed Jan. 31, 2009); 2009 April Quarterly Report at 170 (filed Apr. 15, 2009); 2009 July Quarterly Report at 272 (filed Jul. 15, 2009); 2009 October Quarterly at 247, 283 (filed Oct. 14, 2009) (reported as a debt (Schedule D) and repayment (Schedule B)); *see also* the 2009 Year-End Report listing three debts totaling \$23,722.95 for "loan interest" to Broun. *See* 2009 Year-End Report at 244, 245 (filed Apr. 6, 2010).

1 Based on Broun's reported statement, the Complaint alleges that the Committee violated
2 11 C.F.R. § 104.3(d)(4) by failing to disclose the true source of five loans totaling \$304,000 that
3 Broun made to his Committee in 2007 and 2008 and reported as funded from personal funds
4 including: (1) \$80,000 on March 26, 2007; (2) \$10,000 on May 24, 2007; (3) \$34,000 on June 6,
5 2007; (4) \$80,000 on July 9, 2007; and (5) \$100,000 on April 14, 2008.³ Compl. ¶¶ 8-10, 13-14;
6 *id.* at Exs. A-B. The Complaint states that "[a]t no time since the Paul Broun Committee was
7 established has the Committee filed a Schedule C-1 disclosing the true source" of the loans.
8 Compl. ¶ 10.

9 In their joint Response, Respondents concede that the true source of three of these loans,
10 totaling \$179,000, was not Broun's personal funds but rather a home equity line of credit
11 ("HELOC") Broun obtained from Athens First Bank & Trust. Resp. at 2. Specifically, after
12 loaning the Committee a total of \$95,000 from his personal funds from January to May 2007
13 (\$5,000 in January 2007, \$80,000 in March 2007, and \$10,000 in May 2007), Broun obtained a
14 HELOC on his personal residence.⁴ On June 4, 2007, Broun withdrew an initial amount of
15 \$65,000 from that line of credit and used the funds to repay himself \$65,000 of the \$80,000
16 personal loan he made to the Committee in March 2007. The Committee did not report the
17 receipt of the \$65,000 loan from HELOC or the simultaneous repayment of the \$65,000 to
18 Broun. Resp. at 2 n.1. The Respondents also concede that Broun made two more loans to the
19 Committee "using funds derived from the HELOC": a \$34,000 loan on June 6, 2007, and an
20 \$80,000 loan on July 10, 2007, for a total of \$179,000. Resp. at 2. The \$34,000 and \$80,000

³ The CREW Report mentions six loans totaling \$309,000 during the 2008 election cycle, but the allegations in the Complaint discuss only five loans, which total \$304,000. The Committee also disclosed that Broun made an additional \$5,000 loan to his Committee on January 1, 2007, from his personal funds.

⁴ Broun was the sole signatory on the HELOC. See Resp., Ex. B.

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1 draws from the HELOC were misreported on the Committee's disclosure reports as loans from
2 Broun's personal funds rather than as loans from a bank-issued line of credit.⁵ *See, e.g.*, 2007
3 July Quarterly at 32 (filed Jul. 5, 2007); 2007 October Quarterly at 32 (filed Oct. 15, 2007).

4 On June 26, 2012, after the filing of the Complaint and the Response, the Committee
5 amended its 2007 July Quarterly Report and 2007 30-Day Post-Runoff Report to reflect the
6 receipt of three HELOC loans and related disbursements. Specifically, the Committee disclosed
7 the receipt of the \$65,000 as a loan from Broun derived from the HELOC and the disbursement
8 to Broun for partial payment on an earlier \$80,000 loan from his personal funds. The Committee
9 also changed the loan source for the \$34,000 and \$80,000 loans from Broun's personal funds to a
10 bank loan from Athens First Bank & Trust. The Committee also amended its Schedule Cs for its
11 2007 October Quarterly Report, 2007 Year-End Report, and 2008 April Quarterly Report to
12 reflect Broun as the source of loans for those loans he made to the Committee from his personal
13 funds and to reflect payments to Broun on the \$65,000 loan.

14 The chart below provides an overview of the reporting of the three HELOC loans:

⁵ In 2007, the Commission's Reports Analysis Division ("RAD") sought clarification as to the source of Broun's loans to the Committee. On July 20, 2007, RAD sent a Request for Additional Information ("RFAI") to the Committee, requesting more information on loans totaling \$129,000 that the Committee disclosed on its 2007 July Quarterly Report. In the RFAI RAD also noted that the 2007 July Quarterly Report filed by the Committee should have been the 12 Day Pre-Runoff Report (May 31, 2007 – Jun. 30, 2007). On September 4, 2007, RAD sent another RFAI seeking information as to the amount and original source of loans totaling \$209,000 that the Committee disclosed on its 2007 30-Day Post-Runoff Report. In response to these RFAs, in 2007, the Committee amended its disclosure reports and misidentified the second and third draws from the HELOC as loans sourced from personal funds, but did not report the first draw or the \$65,000 disbursement.

Loan Amount	Date Incurred	Original Disclosure	Amended Disclosure
\$65,000	6/4/07	Not Reported	Amended 2007 July Quarterly (filed 6/26/12) <ul style="list-style-type: none"> Sch. A correctly disclosed the loan receipt Sch. C: added \$65,000 HELOC loan, 0.00% interest rate⁶ Sch. C-1: added, \$65,000 HELOC loan 5.99% interest rate Additional Amendments ⁷
\$34,000	6/6/07	Amended 2007 July Quarterly (filed 11/09/07) <ul style="list-style-type: none"> Sch. A incorrectly identified the source as personal funds Required Sch. C not filed 	Amended 2007 July Quarterly (filed 6/26/12) <ul style="list-style-type: none"> Sch. A correctly disclosed the loan receipt Sch. C added \$34,000 HELOC loan, 0.00% interest rate (see n. 6) Sch. C-1 added \$34,000 HELOC loan, 5.99% interest rate
\$80,000	7/10/07	Amended 2007 30-Day Post-Runoff (filed 11/09/07) <ul style="list-style-type: none"> Sch. A inoorrectly identified the source as personal funds Required Sch. C not filed 	Amended 2007 30-Day Post Run-Off (filed 6/26/12) <ul style="list-style-type: none"> Sch. C: added \$80,000 HELOC loan, 0.00% interest rate. (see n. 6). Sch. C-1: added, \$80,000 HELOC loan, 5.99% interest rate.

III. LEGAL ANALYSIS

The Act requires treasurers to file reports of receipts and disbursements. *See* 2 U.S.C. § 434(a)(1); *see also* 11 C.F.R. § 104.1(a). Further, each report shall identify the person who makes a loan to the committee during the reporting period, together with the identification of any endorser or guarantor of such loan, and date and amount or value of such loan. 2 U.S.C. § 434(b)(3)(E).

⁶ The Committee disclosed that it made interest payments to Broun; however, its Schedule Cs reflect a 0% interest rate for the three HELOC loans while its Schedule C-1s reflect the 5.99% bank interest rate. *See* Amended 2007 July Quarterly at 43-44 (filed Jun. 26, 2012); Amended 2007 30-Day Post Runoff at 51-53 (filed Jun. 26, 2012). On November 16, 2012, the Committee filed a Form 99 to correct the Schedule Cs, to indicate that the interest rate for this loan was 5.99%. *See* Miscellaneous Report to the FEC (filed Nov. 16, 2012).

⁷ The Schedule C filings for the Amended 2007 Post-Run Off, Amended 2007 October Quarterly, Amended 2007 Year-End Report and the Amended 2008 April Quarterly reports filed on June 26, 2012, also reflect the \$65,000 loan and cumulative payments made on the loan.

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1 Commission regulations provide that committees must “disclose the amount and nature
2 of outstanding debts and obligations” on Schedules C and D. 11 C.F.R. § 104.3(d). When a
3 candidate obtains a loan, including a line of credit on a personal residence, “for use in connection
4 with the candidate’s campaign,” the campaign committee must disclose the transaction on
5 Schedules C and C-1 of FEC Form 3.⁸ See 11 C.F.R. § 104.3(d)(4). The committees must also
6 report loan repayments to candidates. See 11 C.F.R. § 104.9(f). Commission instructions on
7 completing Schedule C further explain that the committee must identify the “[t]he terms of the
8 loan between the candidate and the committee (not the terms between the candidate and the
9 lending institution).” See Instructions for FEC Form 3 and Related Schedules at 15 (Revised
10 February 2009) (“*Form 3 Instructions*”). The campaign committee must therefore report the
11 candidate as the source of the loan; the underlying source of the funds; and the interest rate, if
12 any, of the loan between the candidate and the committee. *Id.* at 14-15. The campaign
13 committee must also disclose the original source of the funds on Schedule C-1 — that is, the
14 lending institution that provided the HELOC to the candidate. 11 C.F.R. § 104.3(d)(4); *Form 3*
15 *Instructions* at 16. Also on Schedule C-1, the campaign committee must identify the loan
16 amount and interest rate, as well as the types and value of collateral that secure the loan.
17 11 C.F.R. § 104.3(d)(4). Committees must continuously report their debts and obligations until
18 they are extinguished. 11 C.F.R. §§ 104.3(d), 104.11.

⁸ Committees must report loans derived from a candidate’s own HELOC only when those funds are used in connection with the campaign. 11 C.F.R. § 104.3(d)(4). A committee is “only required to report repayments to the candidate, and would not report the repayments by the candidate to the lending institution.” Brokerage Loans and Lines of Credit, 67 Fed. Reg. 38,353, 38,356 (June 4, 2002) (explanation and justification).

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1 As described above, the Committee failed to properly disclose the three loans that it
2 obtained through Broun's HELOC.⁹ The Committee never reported the first draw from the
3 HELOC, while it incorrectly reported the second and third draws as sourced from Broun's
4 "personal funds." Further, the first HELOC draw of \$65,000 was used to repay a prior loan
5 Broun made to the Committee with his personal funds, but the Committee failed to report the
6 repayment to Broun. *See* 11 C.F.R. § 104.9(f). The Committee did not file a Schedule C-1 and
7 only amended its Schedule Cs after the Complaint was filed in 2012.

8 Although the Committee failed to disclose the receipt of the \$65,000 loan that was
9 funded from the first draw on the HELOC, as well as the simultaneous disbursement to Broun to
10 settle his \$65,000 personal loan, and the Committee misreported the source of the \$34,000 and
11 \$80,000 loans that were funded with the second and third draws on the HELOC, these alleged
12 reporting violations occurred more than five years ago and thus are outside the five-year statute
13 of limitations period. *See* 28 U.S.C. § 2462; *see also* *FEC v. Nat'l Repub. Senatorial Comm.*,
14 877 F. Supp. 15, 19 (D.D.C. 1995). Because the original activity fell outside the five-year statute
15 of limitations within approximately two months of the Complaint being filed, the Committee has
16 substantially corrected the record, and there are no other violations at issue in this matter, the
17 Commission dismisses the allegations in MUR 6556 that the Committee violated 2 U.S.C.
18 § 434(b) and 11 C.F.R. § 104.3(d)(4) by failing to accurately report loans and disbursements and
19 closes the file. *See* *Heckler v. Chaney*, 470 U.S. 821 (1985). The Commission also cautions the
20 Committee regarding the Act's reporting requirements for disclosing loans. Further, because

⁹ Two other loans included in the Complaint's allegations (a \$10,000 loan on May 24, 2007, and a \$100,000 loan on April 14, 2008), and an additional \$5,000 loan the Committee obtained on January 1, 2007, appear to have been correctly reported by the Committee as loans from Broun's personal funds. There is no information available to indicate that these loans were obtained through Broun's HELOC.

- 1 Paul Broun has no personal liability for the reporting violations, the Commission finds no reason
- 2 to believe that Paul Broun violated the Act.

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